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Chairman: Ms. Groux (Vice-Chairman) ..... (Switzerland)
later: Mr. Kuchinsky (Chairman) ..... (Ukraine)

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The meeting was called to order at 10.15 a.m.

Agenda item 105: Human rights questions (*continued*) (A/59/225, A/59/371 and A/59/425)

(a) Implementation of human rights instruments (*continued*) (A/59/40 (vol. I and II), A/59/44, A/59/48, A/59/96, A/59/254, A/59/306, A/59/308, A/59/309, A/59/310, A/59/324 and A/59/353)

1. **Mr. van Boven** (Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment), introducing his report (A/59/324), expressed concern at the erosion of the consensus principle that torture and cruel, inhuman or degrading treatment or punishment were absolutely forbidden as an imperative norm of international law. While he was aware of the threats posed by terrorism and recognized the duty of States to protect their citizens and the security of the State against such threats, he reiterated that the absolute nature of the prohibition of torture and other forms of ill-treatment meant that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, could be invoked as a justification of torture.

2. Referring to paragraph 15 of his report, he said that no executive, legislative, administrative or judicial measure authorizing recourse to torture and cruel, inhuman or degrading treatment or punishment could be considered as lawful under international law and that domestic law could not be invoked as a justification for failure to comply with international treaty obligations and customary international law.

3. Attempts had been made to narrow the scope of the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but he stressed that the definition could not be altered by events or in accordance with the will or interest of States. The right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person was without exception.

4. With regard to reports that acts of torture and ill-treatment had been inflicted on suspected terrorists by private contractors, he recalled that the Human Rights Committee had stated that a failure to ensure rights under the International Covenant on Civil and Political Rights would give rise to human rights violations as a result of States parties permitting or failing to take appropriate measures to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.

5. Noting that numerous persons suspected of terrorism, including children, had been detained, denied the opportunity to have their legal status determined and prevented from having access to lawyers, he stressed that secret places of detention should be abolished. There was no uncertainty as to the international obligations, standards and protections that applied to detainees.

6. As emphasized in paragraph 23 of his report, according to the Convention against Torture, any statement which was established to have been made as a result of torture should not be invoked as evidence in any proceedings, except against a person accused of torture.

7. He criticized practices that undermined the principle of non-refoulement, including that of seeking diplomatic assurances from the receiving country that transferred suspects would not be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Security Council resolution 1456 (2003) stressed that States must ensure that any measure taken to combat terrorism complied with all their obligations under international law, in particular international human rights, refugee and humanitarian law.

8. In his report, he examined several aspects of the impact of torture on its victims in order better to appraise and address the needs of victims, in particular from a medico-psychosocial point of view. He had concluded with the recommendation that a multidisciplinary approach that included medical assistance, financial support, social re-adaptation and legal redress was crucial and he urged strong support for the United Nations Voluntary Fund for the Victims of Torture.

9. In his report, information was given on the various activities that he carried out in discharge of his mandate, including sending communications to Governments. The steadily increasing figures demonstrated a broadening awareness of the complaints mechanisms of the special procedures of the Commission on Human Rights.

10. At the most recent session of the Commission on Human Rights, he had reported on his fact-finding mission to Spain. His two-week mission to China planned for the end of June 2004 had been postponed until later in the year. He was still awaiting an answer to the request he had made jointly with the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health to visit the naval base of the United States of America at Guantanamo Bay.

11. After announcing that he was resigning at the end of the year, he drew attention to five points. First, for the past 25 years, the special mechanisms had been the eyes and ears of the Commission on Human Rights and an essential component of the United Nations system for the promotion and protection of human rights. Second, the various special mechanisms must coordinate among themselves and with the treaty bodies. Responsibility for such coordination lay not only with the special mechanisms themselves but also with the Office of the United Nations High Commissioner for Human Rights. Third, proper follow-up of their actions and recommendations was crucial. Fourth, there was a glaring discrepancy between the workload of the special mechanisms and the financial and human resources available to cope with it effectively. Fifth, as Special Rapporteur on torture, he had acted on behalf of a wide variety of persons. In a number of cases, he would never support the aims and objectives pursued by such persons. The only cause he defended was that everyone without exception must be protected against torture and other cruel, inhuman or degrading treatment or punishment.

12. **Mr. de Klerk** (Netherlands), speaking on behalf of the European Union, congratulated the Special Rapporteur for the clarity of his arguments and paid tribute to his exemplary dedication throughout his career. Turning to paragraph 6 of the report, in which the Special Rapporteur expressed regret that his requests to visit several countries had not yet led to results, he asked whether the Special Rapporteur had any suggestions for solving that problem. While welcoming his categorical emphasis on the absolute nature of the prohibition of torture and other forms of ill-treatment, he noted that, since everyone denounced torture, acts of torture were committed in secret; he would like to know how to resolve that paradox. He associated himself with the Special Rapporteur's appeal for greater support for the United Nations Voluntary Fund for the Victims of Torture and wondered whether it might be useful, in order to make better use of the lessons learned from the Fund's experience, for the Special Rapporteur to work more closely with it and, more generally, whether it would be helpful to produce a manual on the abolition of torture based on the experience of the Special Rapporteur, the Committee against Torture, the Human Rights Committee, the Fund and other competent bodies. Lastly, he would like to know whether the Special Rapporteur could contribute, in certain specific cases, to the implementation of the recommendations made by the Committee against Torture and other international treaty bodies.

13. *Mr. Kuchinsky (Ukraine), Chairman, took the Chair.*

14. **Mr. Vigny** (Switzerland) welcomed the five points raised by the Special Rapporteur, in particular the third, which emphasized the need for States to follow up the recommendations made by the special mechanisms. Concerning paragraphs 19 and 27 of the Special Rapporteur's report on the commission of acts of torture by private contractors and the responsibility of States in such situations, he asked whether the Special Rapporteur was advocating that States take special measures in that regard, such as, for example, providing training for the staff of such contractors. With respect to paragraph 29 of the report, he pointed out that it was extremely difficult for a State to know what were the appropriate legal safeguards that proceedings leading to the expulsion of detainees should respect. He wondered whether it would be useful for the future Special Rapporteur on the question of torture to send a questionnaire to States on that issue and to reproduce their replies in his forthcoming report.

15. **Ms. Verrier-Fréchette** (Canada), referring to paragraph 23 of the Special Rapporteur's report, asked whether proceedings in which evidence obtained under torture had been deemed admissible had resulted in the death penalty and whether the Special Rapporteur planned to address that issue in forthcoming reports. She was gratified that the Special Rapporteur had raised, particularly in paragraph 53, the issue of torture of women, including rape, and would like to know how he intended to tackle that problem and whether he believed that there were lessons to be learned from cases of violence against women in conflict and post-conflict situations.

16. **Ms. Noman** (Yemen) asked whether any recourse existed in cases where a Government refused a request by a special rapporteur to visit its country and also what could be done to end the inhuman treatment of detainees.

17. **Ms. Dempster** (New Zealand) asked what could be done to achieve a consensus on ending torture. Her Government was working to expedite ratification of the Optional Protocol to the Convention against Torture and wondered what relationship the future Special Rapporteur would have with the Committee against Torture once the Optional Protocol entered into force.

18. **Mr. van Boven** (Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment), replying to the representative of the Netherlands, said that it was rare for a country to refuse outright to receive a visit by a special rapporteur. There might be logistical problems, or upcoming elections or other reasons might be invoked. Visits were based not on a treaty but on the principle of cooperation with the United Nations. They were fact-finding missions which also afforded the opportunity to make recommendations. Some 50 States had expressed their willingness to receive a visit by the Special Rapporteur and he encouraged other countries to do likewise.

19. With regard to the second question posed by the representative of the Netherlands on behalf of the European Union, he said that there was no easy answer. Unlike executions or the death penalty, acts of torture were not committed openly. He encouraged victims and survivors of torture to break the silence and publicly to denounce the acts that had been committed. He also urged Governments to declare formally that torture was absolutely prohibited in all circumstances.

20. On the third question, he favoured a closer working relationship with the United Nations Voluntary Fund for Victims of Torture because the Fund's work was useful to the Committee against Torture and the Special Rapporteur.

21. In response to the fourth question posed by the Netherlands representative and the comments made by the representative of Switzerland, he said that, when he visited a country, it was important for him to emphasize the recommendations made by the Committee against Torture to that country and even to incorporate those recommendations into his own. Lack of resources had prevented him from monitoring their implementation, however.

22. Responding to the question raised by the representative of Switzerland, he said that States were now more aware that their responsibility might be engaged if a private contractor used torture. He recalled that the Human Rights Committee had addressed that issue in its General Comment No. 29 on article 2 of the International Covenant on Civil and Political Rights. With regard to the legal safeguards that must be respected in the expulsion of detainees, he said that he and his predecessor had formulated general recommendations on that issue, some of which appeared in his report. He emphasized that it would be worthwhile to follow them up and even to include them in a questionnaire.

23. Replying to the question by the representative of Canada, he said that the death penalty fell within his mandate only when the death sentence was based on evidence obtained under torture or when particularly cruel methods of execution were used, such as stoning or double hanging.

24. Concerning torture of women, including rape, in situations of armed conflict, he recalled that the International Criminal Tribunal for the Former Yugoslavia had addressed that question and that, in some circumstances, the Statute of the International Criminal Court considered sexual violence against women to be a crime against humanity. He was working closely with the Special Rapporteur on violence against women, and the question was increasingly at the forefront of international concerns.

25. Replying to the representative of Yemen, he said that when a State refused a request by him to visit the country, the procedure followed was that, in the absence of a marked improvement in the situation in the country, the request was repeated until it was accepted. He emphasized, however, that it was impossible for him to visit 10 to 15 countries a year and that the physical demands of such visits and the resources they required meant that only there or four visits a year, on average, could be made.

26. Replying to the question by the representative of New Zealand concerning consensus on the absolute prohibition of torture, he emphasized that, while that prohibition was enshrined in all international and regional human rights instruments and in international customary law, in practice the situation was often very

different. He reiterated his immense concern at the erosion of that consensus, especially in political and academic circles, and recalled the absolute nature of the prohibition of torture not only under international human rights law but also under international humanitarian law.

27. Lastly, concerning the relationship between the Special Rapporteur and the Committee against Torture once the Optional Protocol entered into force, he said that he already had informal relations with some mechanisms, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe, but was not convinced of the need to formalize the relationship.

28. **Ms. Wong** (United States of America) emphasized that her country subscribed to many elements in the report, such as the absolute prohibition of torture under international law, the principle of non-refoulement referred to in article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the need to ensure the inviolability of the obligations laid down by the Convention and the importance of taking into consideration the needs, particularly the psychological needs, of victims of torture.

29. With respect to the questions posed by the representative of the Netherlands on behalf of the European Union and by the representative of Yemen, concerning the requests to visit the Guantanamo naval base which had not yet led to results, her Government hoped very soon to be able to discuss issues relating to the detainees with the Special Rapporteurs. On the occasion of the United Nations International Day in Support of Victims of Torture, the United States President had recalled that his country was resolutely opposed to torture and was determined to investigate all credible allegations of torture and to take the necessary action, since torture was an issue of central concern to his country.

30. **Mr. Vlasov** (Russian Federation) stressed his country's desire to develop cooperation with the special procedures system of the Commission on Human Rights, which played a key role in the protection of fundamental rights. In the absence of any legally binding instrument on that issue, such cooperation was entirely voluntary.

31. He recalled that the then Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had visited the Russian Federation in 1995 and that his recommendations had been implemented by the competent domestic authorities. His Government intended to strengthen its cooperation with the current Special Rapporteur and was trying to organize a visit by him to the country. Noting that it was not always practicable for States to grant requests for visits quickly, he said that his country would be receiving visits from the Special Rapporteur on violence against women, its causes and consequences (whose mandate overlapped, in some respects, with that of the Special Rapporteur on torture) in December 2004, the High Commissioner for Human Rights in February 2005 and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in June 2005. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment also carried out regular missions to his country.

32. **Mr. Endresen** (Norway), noting the long-term psychological effects of torture and the assistance required by its victims, asked how the international community might contribute to the rehabilitation of victims, other than by providing financial support to the United Nations Voluntary Fund for Victims of Torture.

33. **Mr. Cho** Tae-ick (Republic of Korea), noting that torture was practised almost everywhere in the world, especially during internal armed conflicts, asked what would be the most effective means of combating it in the context of armed conflict.

34. **Mr. Ballestero** (Costa Rica) asked the Special Rapporteur to discuss in more detail the practice of using evidence that might have been obtained under torture when pronouncing death sentences and to indicate what measures might be taken to prevent such actions, which were in violation of article 15 of the Convention against Torture and could not be tolerated.

35. **Mr. van Boven** (Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment), responding to the representative of Norway, said that the Voluntary Fund for Victims of Torture provided financial support to organizations that worked to rehabilitate victims through a wide range of activities.

If the Commission on Human Rights decided to adopt the basic principles and guidelines on the right to a remedy and reparation for victims of violations of international human rights and humanitarian law, they could be used because rehabilitation was an element of reparation. The Office of the United Nations High Commissioner for Human Rights could also draw on the valuable guidance and cooperation of the World Health Organization (WHO).

36. With regard to the problem of the use of torture within the context of armed conflict, he noted that while monitoring bodies existed in the field of human rights, the same was not true of humanitarian law and its application in armed conflicts. It would therefore be necessary to work with the International Committee of the Red Cross (ICRC) to strengthen the monitoring and investigation procedures that might be implemented in such situations.

37. Finally, as noted by the representative of Costa Rica, under article 15 of the Convention against Torture the use of evidence that might have been obtained under torture ought to be unacceptable, and yet it did sometimes occur. Lawyers and judges had the right and the duty to verify all their sources of information and to act accordingly. In some countries, there had been cases where higher court judges based their decisions on information obtained elsewhere through torture, a practice that must be combated, notably by ensuring the implementation of the Convention against Torture.

38. **Mr. Cumberbach Miguén** (Cuba) recalled that the media often played an important role by disclosing to the whole world information that had been kept secret, as had been the case when the United States had established a naval base illegally at Guantanamo Bay. It was surprising that the international community, which was supposed to be seeking an end to the practice of torture, was not working more actively to secure authorization for the Special Rapporteur to visit the base. Since the media also sometimes published inaccurate information, it would be useful if the Special Rapporteur could indicate how much influence they had on his work.

39. **Mr. van Boven** (Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment) confirmed that the media played a very important role by making the general public aware of certain problems and by bringing certain practices to light. However, the medi could not be his only source of information because when an urgent appeal had to be answered or a allegation verified, it was absolutely essential to chec the validity of the information by consulting severa sources.

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms (*continued*) (A/59/255, A/59/319, A/59/320, A/59/323, A/59/327, A/59/328, A/59/341, A/59/360, A/59/366, A/59/377, A/59/385, A/59/401, A/59/402, A/59/403, A/59/422, A/59/428, A/59/432, A/59/436 and A/59/525)

40. **Mr. Alston** (Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions), underscoring the importance of the role of Special Rapporteur, paid tribute to his three predecessors, in particular his immediate predecessor whose report (A/59/319) was before the Committee. That report provided an overview of the work undertaken, a valuable synthesis of the issues and a snapshot of the current situation. For his part, he wished to emphasize dialogue with Governments and to be responsive to the views and concerns expressed by them. All his activities would be grounded clearly within the terms of his mandate and he would invoke applicable principles of international law when putting forward his positions.

41. He would work closely with civil society in gathering information about executions worldwide, do his utmost to discourage and deter killings, expose those that did occur and hold responsible Governments to account.

42. He would also like to reduce the degree of bureaucratization, simplify the "diplomatic" language used in communicating with Governments and be as focused as possible in describing the precise objects of his concerns. Lastly, his emphasis would be on results and he would prefer to send fewer, but more detailed, reasoned and targeted communications.

43. With regard to his mandate and future reports, he did not intend to devote time or energy to the definition of the terms "extrajudicial", "summary" and "arbitrary" because, in terms of the evolution of the mandate, they revealed relatively little about the real

nature of the issues. He would focus on the mandate as it had evolved over the years through the various resolutions of the General Assembly and the Commission on Human Rights.

44. It would be helpful to introduce a thematic dimension to the report; he planned, in each successive report, to give more detailed consideration to one or more specific issues of concern and to spell out the way in which those issues might best be approached. Country reports would be reorganized to show more clearly the responsiveness of Governments to matters raised with them. He would also indicate more clearly the requests that had been made for visits and the responses received.

45. Emphasis would be placed on cooperation with the special procedures system, as was already the case with the Special Adviser to the Secretary-General on the Prevention of Genocide, except in situations where it would be more appropriate to deal with the question separately.

46. **Mr. de Klerk** (Netherlands), speaking on behalf of the European Union, asked the Special Rapporteur on extrajudicial, summary or arbitrary executions with which other special rapporteurs and special advisers, besides the Special Adviser on the Prevention of Genocide, he expected to work closely and in what way. He also wished to know what means the Special Rapporteur intended to use to strengthen dialogue and cooperation with Governments with a view to the implementation of his recommendations. Lastly, referring to paragraph 47 of the report (A/59/319) in which mention was made of the constitution in Afghanistan of an international independent commission of inquiry and the cataloguing of incidents of summary executions in the country from April 1978 to December 2001, he asked the Special Rapporteur what he viewed as the key priorities in setting up transitional justice mechanisms and restoring the rule of law in countries in post-conflict situations.

47. **Mr. Elbadri** (Egypt), referring to the methodology used in the preparation of the report (A/59/319), asked why certain States were mentioned by name and others not. He referred in that connection to paragraph 36 of the report, recounting certain events that had occurred in the Occupied Palestinian Territory, and asked why the country that had carried out the extrajudicial executions in question had not been named. He expressed surprise that that paragraph mentioned the context of post-11 September counter-terrorism measures, when the problem dated back to 1948. Referring to another passage in the same paragraph, in which the Special Rapporteur stated that aerial bombing or targeted assassinations in areas populated by civilians resulting in deaths would constitute extrajudicial or summary executions, he said that giving new definitions in that way did not fall within the Special Rapporteur's mandate and that he took issue with the implication that the same acts perpetrated in a less populated area would not constitute extrajudicial or summary executions. Turning to paragraph 50, he expressed surprise that "sexual identity" had been invoked in connection with killings of members of vulnerable groups and asked what was meant by that term. Lastly, regarding deaths in custody (paragraph 64 of the report), his country's Constitution totally prohibited torture and ill-treatment in prison and the authorities initiated an investigation into any death in custody.

48. **Ms. Rasheed** (Palestine) associated herself with the statement made by the representative of Egypt and asked why a linkage had been made in paragraph 36 between post-11 September counter-terrorism measures and the aerial bombing of the Occupied Palestinian Territory, potentially causing a dangerous confusion. She was also surprised that the Special Rapporteur had mentioned only one bombing in the Occupied Palestinian Territory, had not classified it as an extrajudicial execution and had not named the State responsible for it. Over 400 Palestinians, including children, had died in the past four years as a result of extrajudicial executions, and she was astonished that the report had not mentioned Israel as a country that carried out such executions, even though it openly admitted to that practice. She criticized the wording of paragraph 36, which implied that targeted assassinations constituted extrajudicial or summary executions only when they were carried out in areas populated by civilians and resulted in deaths. That was totally incompatible with the rules and principles of international law, and she asked the Special Rapporteur to explain why the issue had been presented in such an ill-advised manner.

49. **Ms. García-Matos** (Venezuela) said that, like the representative of Egypt, she wondered what had prompted the Special Rapporteur to name only certain countries. Referring to paragraph 60 of the report, in which mention was made of a letter sent to her

Government concerning the alleged killing of three transsexual persons, she said that Venezuela's Attorney-General's Office had in fact conducted a proper investigation. She recapitulated all the information that her Government had provided on each of the three cases in the letter it had sent to the Special Rapporteur in October 2003. Turning to paragraph 66 of the report, she said that her country had a perfectly structured and functioning national judicial system for the protection of human rights.

50. **Mr. Vigny** (Switzerland), referring to articles 6 and 14 of the International Covenant on Civil and Political Rights and articles 37 (a) and 40 of the Convention on the Rights of the Child, in particular a number of binding or *jus cogens* provisions, asked the Special Rapporteur whether, like his predecessor, he considered capital punishment to fall within his mandate.

51. **Mr. Alston** (Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions), replying to delegations, told the representative of the Netherlands that he intended to cooperate with many special mechanisms, inter alia the Special Adviser on the Prevention of Genocide, the Special Rapporteur on torture and the Special Rapporteur on violence against women, its causes and consequences. In order to strengthen the dialogue with Governments, he planned to ensure the implementation of an appropriate follow-up procedure and to substantiate thoroughly his responses to the positions adopted by each country's authorities. Regarding the situation in Afghanistan, it was impossible to define an absolute priority, but one of the many priorities would be to attribute responsibility for the executions and murders carried out under the Taliban regime, in order to put an end to impunity.

52. Replying to the representative of Egypt concerning the methodology used in drafting the report, he said that its occasionally cryptic style could be explained by the limit on the number of pages and the myriad issues and countries covered. Delegations could consult the reports prepared for the Commission on Human Rights and their addenda in order to obtain further information. Regarding the question raised by the representatives of Egypt and Palestine concerning the failure to name Israel in paragraph 36 of the report, he said that his predecessor had issued a press release on the subject, which had been followed by an exchange of correspondence with Israel, and that there had been no particular reason for the failure to name that State. Concerning the terminology used, he referred the two representatives to paragraph 35 of the report, on the targeted assassination in Yemen. The Special Rapporteur had never meant to suggest that targeted assassinations committed outside areas populated by civilians might be acceptable. The reference to post-11 September counter-terrorism measures was not designed to delimit any particular period, but rather to draw attention to the sea changes that had occurred after that date, which were unacceptable insofar as they had opened the way for extrajudicial, summary or arbitrary executions.

53. Replying to the representative of Egypt concerning the reference to "sexual identity", he said that that was one of the many motives invoked and that it was cited in a not insignificant number of reports of extrajudicial executions. Accordingly, it had been necessary to include it in the report. Lastly, on the question of deaths in custody, he referred to several very recent, widely publicized, deaths, which showed clearly that such deaths occurred.

54. He thanked the representative of Venezuela for the very detailed information that she had provided and assured the representative of Switzerland that capital punishment not only fell within his mandate but was one of its fundamental components.

55. **Mr. Bâzel** (Afghanistan), supporting the initiative taken by the Office of the High Commissioner for Human Rights to catalogue incidents of summary executions from 1978 to 2001 (paragraph 31 of the report), expressed surprise that that exercise was restricted to summary executions and did not cover all the other crimes committed during that period (war crimes, crimes against humanity and crimes of aggression). He also wished to know why no mention had been made of involvement of the foreigners in those acts.

56. **Mr. Cumberbach Miguén** (Cuba) asked the Special Rapporteur how he intended to reconcile his decision not to redefine the terms "extrajudicial", "summary" and "arbitrary" with the existing provisions of national laws. Associating himself with the questions raised by the representatives of Egypt and Palestine concerning paragraph 36 of the report, he expressed concern that national liberation movements might be equated with terrorist groups and that singling

out certain countries might create the impression that only third world countries committed extrajudicial, summary or arbitrary executions. Such an approach not only smacked of a double standard but also undermined the legitimacy of the cases described in the report. Lastly, he expressed surprise that the report only once mentioned the replies received from national authorities. Citing the example of Venezuela, whose official reply was not even mentioned in paragraph 60, he asked the Special Rapporteur how he planned to remedy the problem.

57. **Mr. Gba** (Côte d'Ivoire) said that it was regrettable that the previous Special Rapporteur had not been able to visit Côte d'Ivoire before preparing her report (A/59/319) and that, basing her findings solely on information communicated to her and without citing her sources, she had added Côte d'Ivoire to the list of countries where violations of the right to life and death threats had taken place (paras. 61 and 68). Citing the climate of defamation that prevailed in countries that, like Côte d'Ivoire, were in conflict situations, he invited the new Special Rapporteur to visit the country in order to meet all the protagonists.

58. **Ms. Chan** (Singapore) asked the Special Rapporteur to outline the approach he planned to take to his mission. Describing as a logical fallacy the recommendation at the beginning of paragraph 75 to impose a moratorium on executions, she said that that was like recommending the abolition of prisons because prison conditions were deplorable in some countries. By recommending that all States impose a complete moratorium on all executions, the previous Special Rapporteur had overstepped her mandate, which applied exclusively to extrajudicial, summary and arbitrary executions.

59. **Ms. Hastaie** (Islamic Republic of Iran) associated herself with the statement made by the representative of Egypt. On the question of methodology, she inquired about information sources, how information was selected, rated and disclosed and why certain countries were singled out for criticism. She asked the Special Rapporteur whether he felt he had the right or the duty to interpret his mandate and whether there was any particular reason why genocide had been added to the list of forms of violations of the right to life (paragraph 14 of the report) when it had not appeared in previous reports. She wished to know whether he saw his mandate as overlapping with those of other special mechanisms or as completely distinct from them. In her delegation's view, the report encroached on the territory of other special rapporteurs, a situation which might create problems and cause confusion in the long term. Lastly, she asked whether the mention in paragraph 36 of both post-11 September measures and the assassination of the Hamas leader reflected a desire to link the two events; if not, she would like to know the reasons for their juxtaposition.

60. **Ms. Holguín** (Colombia) associated herself with the representative of Egypt in asking the Special Rapporteur to explain the methodology used in drafting the report. Her delegation categorically rejected the unfounded and unprecedented statement in paragraph 40 that paramilitary groups in Colombia were tolerated or supported by the Government. She was amazed that none of the passages on Colombia in the report mentioned acts committed by the guerrillas, and she invited the Special Rapporteur to visit the country.

61. **Ms. Dempster** (New Zealand), noting the priority accorded to genocide, massacres and ethnic cleansing in the report and drawing attention to paragraphs 30, 76 and 77, said that an early-warning mechanism would be particularly useful in preventing such crimes. In that regard, she welcomed the information provided by the new Special Rapporteur on his cooperation with the Special Adviser on the Prevention of Genocide and asked him to describe the measures he intended to take to strengthen that cooperation.

62. **Mr. Alston** (Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions) assured the representative of Afghanistan that crimes against humanity were indeed within his mandate, which involved fact-finding and ensuring an end to impunity. Accordingly, his report would cover acts committed by foreigners as well as by Afghans.

63. As to how to reconcile the Special Rapporteur's mandate with national laws and approaches, a question raised by Cuba, he emphasized that the action taken by international bodies was designed to help or encourage Governments fully to respect the international norms which they had accepted and which they were supposed to incorporate into their domestic legislation.

64. He thanked the representative of Côte d'Ivoire for inviting him to visit that country. While it was important for special rapporteurs to exercise discretion in order to be sure that reports came from reliable

sources, backed up by all available information, it was not advisable, in his view, for them to reveal their sources in all cases.

65. Replying to the representative of Singapore, who had raised the matter of a moratorium on executions, he said that he could not accept the analogy she had drawn with prisons, for the simple reason that the death penalty was irreversible. It was undeniable that international law did not prohibit capital punishment and he hoped to engage in a frank discussion with States that had chosen to retain it. Although efforts to promote the abolition of the death penalty were important, it was equally important to work with States that retained it and to examine that practice in order to decide whether it raised valid concerns related to the Special Rapporteur's mandate.

66. He assured the representative of Iran that he had no intention of interpreting his mandate and that he was determined to follow the instructions given by Member States. The question of genocide went to the very heart of his mandate because genocide was the most extreme manifestation of the executions that were the mandate's raison d'être. The fact that the Secretary-General had developed a special action plan and had appointed a Special Adviser on the Prevention of Genocide amply demonstrated the concern that the phenomenon aroused in the international community. As for any overlapping between his activities and those of other special rapporteurs, he assured delegations that he was determined not to add his name to any communication unless it was clearly linked to his mandate.

67. He thanked the representative of Colombia for inviting him to visit her country, but would have to take the programme of other human rights mechanisms into consideration in deciding whether to act on her proposal. Executions by guerrilla forces were a controversial issue that he hoped to examine more closely. He felt that the United Nations human rights mechanisms did not follow a consistent policy with respect to non-State actors, to whom they sometimes attached great importance while at other times refusing to even discuss them.

68. Replying to the representative of New Zealand, he said that he had already emphasized the importance of genocide and massacres and the need to monitor such situations closely. Concerning cooperation between the Special Rapporteur and the Special Adviser on the Prevention of Genocide, there was no doubt that their activities could complement each other and they were in fact studying how to proceed.

69. **Ms. Astanah Banu** (Malaysia) said that the Special Rapporteurs were appointed to carry out a specific mandate and that their reports should conform fully conform to the functions entrusted to them. The latest report (A/59/319), however, contained a number of digressions which were not necessarily relevant or useful for considering the problem of extrajudicial, summary or arbitrary executions. In paragraph 64 of the report, the previous Special Rapporteur had given a whole list of countries where, according to information she had received, deaths in custody had allegedly occurred, but she had not specified which countries had provided her with detailed explanations of their position. Moreover, half the paragraphs containing recommendations did not relate to issues covered by the mandate. Her delegation hoped that future reports would be more precise.

70. **Mr. Saran** (India) underscored member States' growing concern at the fact that some special mechanisms, which had been described as the eyes and ears of the United Nations system for the protection or human rights, seemed incapable of adhering strictly to their mandates and of acting within the framework established for them. The methodology used was also every bit as important as the outcome. Communications sent by the Special Rapporteur to Member States must be well substantiated and documented and not based on press reports or second-hand information. His delegation could not accept the recommendation for a moratorium on capital punishment. India was in a special situation because the death penalty still existed but was only very rarely applied; moreover, strong remedies existed, including presidential clemency. He noted that the need to limit the length of the report, although understandable, led to generalizations and ultimately to a lack of precision. His delegation sympathized with the difficulties raised by the Special Rapporteur on the question of torture with regard to reconciling the need for coordination among the human rights mechanisms and the limited resources available.

71. He asked the Special Rapporteur on extrajudicial, summary or arbitrary executions what linkage he envisaged between his own mandate and the work of the intersessional open-ended working group to elaborate a draft legally binding normative instrument

for the protection of all persons from enforced disappearance and what recommendations he might give that group concerning the monitoring mechanism for which such an instrument would necessarily have to provide.

72. **Ms. Pylvänäinen** (Finland), referring to the responsibility of States for acts committed by non-State actors and the many cases reported to the Special Rapporteurs over the years of murders of members of vulnerable groups committed with impunity by non-State actors, asked the Special Rapporteur what he considered States' primary responsibility to be in such cases.

73. **Mr. Endresen** (Norway) said that, in his view, the execution of children under the age of 18, pregnant women and mentally handicapped persons was incompatible with international customary law, and asked the Special Rapporteur how the international community could best assist him in persuading States to reconsider death sentences handed down against children under the age of 18 but not yet carried out.

74. **Mr. La** Yifan (China) said that his delegation, like several others, regretted that in drafting her report the previous Special Rapporteur had overstepped her mandate. Such digressions could only undermine her credibility and her cooperation with Member States. The mention of a moratorium on the death penalty in the recommendations was inappropriate. With respect to the cases mentioned in the report that involved China, his Government had conducted in-depth investigations and had replied rapidly to the questions raised. Trials had been conducted in accordance with the law and sentences had been handed down in conformity with judicial procedure. Those cases could not therefore be considered arbitrary executions. He recalled that his Government had supplied very detailed explanations in that regard.

75. **Mr. Alston** (Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions) said that the representative of Malaysia had raised questions on which there was clear disagreement. The report in document A/59/319 was a comprehensive one summarizing six years' consideration of those questions. Each Special Rapporteur must decide whether it was better to tackle a large number of questions or to consider a smaller number in detail. In his capacity as the new Special Rapporteur, he personally would prefer to deal with fewer questio but in greater depth. With regard to deaths in custod (para. 64), he noted that the addenda to reports to th Commission on Human Rights contained detaile information on each case.

76. Replying to the representative of India, he sai that he shared his view as to the need to stay within th framework of the mandate. Questions of methodolog were of course important. Procedures had improve greatly over the years and the rapporteurs themselve had begun to refine them. He had not yet been able t study the draft instrument on enforced disappearanc thoroughly, but he was well aware of the need to lim the proliferation of new mechanisms and ne procedures within the United Nations; it was importan never to lose sight of the overall architecture of th system.

77. Replying to the representative of Finland, he sai that the responsibilities of Governments with respect t the activities of non-State actors were very clear whe the State's involvement was obvious, but much mor complex when a State could plausibly deny an involvement. One clear principle of international la that had taken shape with cases of disappearance an had been strengthened subsequently with cases o violence against women was that of due diligence whereby States must show that they had done all the could to respond to a systematic pattern of behaviou on the part of non-State actors.

78. Replying to the representative of Norway, he sai that since 1990 executions of children under the age o 18 had occurred in only eight countries and that th very active debates aroused by that issue woul certainly lead those States to end a practice that, in hi view, was incompatible with the requirements o international law.

79. He thanked the representative of China for th clarifications he had provided. With respect to th death penalty, he said that judicial systems in genera could not be deemed infallible; experience had show that mistakes occurred in many countries with highl sophisticated judicial systems. That was why it wa necessary to review each individual case carefully.

The meeting rose at 1.10 p.m.